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TELEGRAM

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PAGE 01 USUN N 01194 01 OF 02 041857Z

72
ACTION L-03

INFO OCT-01 IO-12 ADP-00 AF-10 ARA-11 EA-11 EUR-25 NEA-10

RSC-01 SS-15 NSC-10 NSF-04 GAC-01 ACDA-19 CIAE-00

DODE-00 PM-09 INR-10 NSAE-00 NASA-04 SCI-06 MC-02

PA-03 USIA-12 PRS-01 RSR-01 /NRE-00 OTP-02 /183 W
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P R 041714Z APR 73
FM USMISSION USUN NY
TO SECSTATE WASHDC PRIORITY 7319
INFO AMEMBASSY MOSCOW

C O N F I D E N T I A L SECTION 1 OF 2 USUN 1194

E.O. 11652 GDS
TAGS: TSPA, PFOR, UN, UR
SUBJ: OUTER SPACE LEGAL: STATUS OF MOON TREATY NEGOTIATIONS

1. SUMMARY. THIS TELEGRAM SETS FORTH THE CURRENT STATUS OF NEGOTIATIONS ON THE MOON TREATY IN THE UN OUTER SPACE LEGAL SUBCOMMITTEE. IF THE ITALIAN PROPOSAL ON POSSIBLE FUTURE EXPLOITATION OF NATURAL RESOURCES PROVES ACCEPTABLE TO THE US AND THE NON-ALIGNED, IT SHOULD BE POSSIBLE TO COMPLETE NEGOTIATION OF THE MOON TREATY ON A SATISFACTORY BASIS DURING THE CURRENT SESSION, WHICH IS SCHEDULED TO END 20 APRIL.

2. DETAILS. NATURAL RESOURCES. THE LEGAL SUBCOMMITTEE HAS NOW COMPLETED AN INITIAL SIX DAYS ON THE MOON TREATY AND TURNS FOR THE NEXT SIX TO REGISTRAION. THE MOST POTENTIALLY DIFFICULT MOON TREATY ISSUE RELATES TO THE QUESTION OF POSSIBLE FUTURE EXPLOITATION OF NATURAL RESOURCES ON THE MOON AND OTHER CELESTIAL BODIES. IF THIS CAN BE RESOLVED, THE OTHER PRINCIPAL REMAINING ISSUES OF SCOPE AND TITLE AND NOTIFICATION OF LUNAR AND CB MISSIONS SHOULD BE RESOLVED RELATIVELY EASILY AND WITHIN A DAY OR TWO. OUR 1191

DECLASSIFIED

Department of State **TELEGRAM**

CONFIDENTIAL

PAGE 02 USUN N 01194 01 OF 02 041857Z

(NOTAL) SETS FORTH THE ITALIAN PROPOSAL. BIED

3. THREE ADDITIONAL ASPECTS ON RESOURCE EXPLOITATION NEED TO BE REPORTED. (A) EXCEPT FOR THE QUESTION OF WHEN REPORTS ARE TO BE MADE, THE SUBCOMMITTEE AGREED LAST YEAR ON THE TERMS OF A U.S. PROPOSAL CALLING FOR LAUNCHING STATES TO REPORT ON THE TIME, PURPOSES, LOCATIONS, ORBITAL PARAMETERS, DURATION AND RESULTS OF EACH LUNAR OR CB MISSION. INDIA HAS NOW PROPOSED THAT THIS OBLIGATION SHOULD ALSO COVER THE DISCOVERY OF LUNAR OR CB "RESOURCES", AND THIS IS ATTRACTING CONSIDERABLE SUPPORT. BIED

WE UNDERSTAND IS CONSONANT WITH CURRENT U.S. PRACTICE, PROVIDED IT IS REWORKED TO RELATE TO THE DISCOVERY OF "NATURAL RESOURCES"; THE INDIAN WORD "RESOURCES/ IS TOO BROAD AND COULD BE TOO DIFFICULT OF APPLICATION IN PRACTICE. (B) ARGENTINA HAS INTRODUCED A LONG TEXT ON RESOURCES, NOT NOW THE SUBJECT OF ACTIVE CONSIDERATION. ITS SECOND SENTENCE DEFINES THE CONCEPT UNHELFULLY AS FOLLOWS: "ALL SUBSTANCE ORIGINATING ON THE MOON OR OTHER CB'S SHALL BE REGARDED AS NATURAL RESOURCES. THE SAME CHARACTER SHALL ATTACH TO ANY DEVELOPMENT UNDERTAKEN FROM OR ON THE MOON OR OTHER CB'S IN THE COMMUNICATIONS, ENERY OR ANALOGOUS FIELDS." BIED

HOWEVER, ARGENTINA'S PAPER ALSO CONTAINS A PROPOSAL THAT MAY BECOME IMPORTANT IN THE NEGOTIATIONS, PARTICULARLY IF THERE IS TROUBLE OVER THE ITALIAN TEXT. THIS PART OF THE ARGENTINE PROPOSAL, BIED

READS "THE UTILIZATION AND DEVELOPMENT OF THE NATURAL RESOURCES OF THE MOON AND OTHER CELESTIAL BODIES, PROVIDED THAT THEY ARE UNDERTAKEN IN CONFORMITY WITH THIS TREATY, SHALL BE LAWFUL ON THE UNDERSTANDING THAT THEIR MISUSE SHALL BE AVOIDED AND THAT THE RECOGNIZED RIGHTS OF OTHER STATES PARTIES SHALL NOT BE IMPAIRED." (C) IRAN HAS PROPOSED ADDING A PREAMBULAR STATEMENT THAT THE MOON IS THE COMMON HERITAGE OF MANKIND, STATING THAT THE "COMMON HERITAGE" CONCEPT SHOULD BE UNDERSTOOD MORE BROADLY THAN IN RELATIONS TO

CONFIDENTIAL

FORM

Department of State **TELEGRAM**

CONFIDENTIAL

PAGE 03 USUN N 01194 01 OF 02 041857Z

SHARING THE BENEFITS FROM LUNAR NATURAL RESOURCES, INDEED THAT IT SHOULD PROVIDE A "JURIDICAL FRAMEWORK" FOR THE ENTIRE TREATY. WASHINGTON CONCISERATION OF THIS PROPOSAL WOULD BE USEFOD, SINCE IT MIGHT BECOME STATED CONDITION FOR LDC ACCEPTANCE OF ITALIAN COMPROMISE ARTICLE ON NATURAL RESOURCES.

4. SCOPE AND TITLE. THE SOVIETS HAVE TACITLY ACCEPTED THE U.S. INSISTENCE ON EXPANDING THE TREATY TO COVER ACTIVITIES ON ALL CB'S WITHIN THE SOLAR SYSTEM, NOT JUST THE MOO,. THE ONLY REMAINING ISSUE IS HOW THIS EXPANDED COVERAGE SHOULD BE PHRASED. IN CONNECTION WITH THE BRRITISH COMPROMISE PROPOSAL (REPORTED USUN 1132, PARA 3), WE SPOKE TO UK REP FREELAND TO SEE WHETHER HE WOULD BE AMENABLE TO TWO CHANGES. (A) WE ASKED IF HE COULD SOFTEN HIS REFERENCE TO THE POSSIBILITY OF NEGOTIATING FUTURE "SEPARATE ARRANGEMENTS" FOR EXPLORATION AND USE OF A PARTICULAR CB BY STATING THAT SUCH ARRANGEMENTS SHOULD TAKE THE FORM OF A PROTOCOL TO THE PRESENT TREATY RATHER THAN A COMPLETELY SEPARATE TREATY. FREELAND SAID HE COUD ACCEPT REVISING HIS PROPOSAL TO REFER TO "SUPPLEMENTAL ARRANGEMENTS", WHICH WOULD ENCOMPASS THIS POSSIBILITY. (B) WE ALSO TOLD HIM WE PREFER OUR MORE STRAIGHTFORWARD PROPOSAL THAT "THE PROVISIONS OF THIS TREATY SHALL APPLY TO THE MOON, PLANETS AND OTHER CB'S WITHIN THE SOLAR SYSTEM, OTHER THAN THE EARTH..." TO HIS MORE INDIRECT "REFERENCE IN THIS TREATY TO THE MOON SHALL BE DEEMED ALSO TO APPLY TO THE PLANETS AND OTHER CB'S WITHIN THE SOLAR SYSTEM, EXCEPT THE EARTH..."

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5. ON THE RELATED ISSUE OF TITLE, THE SOVIETS HAVE AGREED TO OUR INSISTENCE THAT THE TITLE FAIRLY FREFLECT THE FACT THAT THE TREATY DEALS NOT ONLY WITH THE MOON BUT WITH OTHER CB'S WITHIN THE SOLAR SYSTEM. THE PRECISE WORKDING WILL NOT BE RESOLVED UNTILL A SATISFACTORY SCOPE TEXG HAS BEEN AGREED.

CONFIDENTIAL

FORM DS-1350

Department of State

TELEGRAM

CONFIDENTIAL 237

PAGE 01 USUN N 01194 02 OF 02 050045Z

72
ACTION L-03

INFO OCT-01 IO-12 ADP-00 AF-10 ARA-11 EA-11 EUR-25 NEA-10

RSC-01 SS-15 NSC-10 NSF-04 GAC-01 ACDA-19 CIAE-00

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C O N F I D E N T I A L SECTION 2 OF 2 USUN 1194

6. REPORTING LUNAR AND CB MISSION. THE BRITISH AND MEXICANS PARTICULRLY LIKE OUR PROPOSAL FOR NOTIFICATION OF AN INTENTION TO LAUNCH A MISSION 60 DAYS IN ADVANCE, AS DOES THE MAJORITY OF THE SUBCOMMITTEE, BUT THERE IS WIDESPREAD AWARENESS THAT THE USSR WILL NOT ACCEPT ADVANCE NOTIFICATION IN ANY FORM.

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7. DEPOSITARY PROVISIO S. ARGENTINA AND A NUMBER OF OTHERS ARE URGING THAT IT IS NOW TIMELY TO RETURN THE DEPOSITARY FUNCTION TO THE UN. THE BRITISH SAY THEY WILL BE WILLING TO DO SO AT SUCH TIME AS EAST GERMANY HAS BEEN ADMITTED TO UN MEMBERSHIP, BUT NOT UNITL THEN.

CONFIDENTIAL

Department of State **TELEGRAM**

CONFIDENTIAL

PAGE 02 USUN N 01194 02 OF 02 050045Z

WE AGREE WITH THE UK DELEGATION THAT IT WOULD BE UNDESIRABLE TO CONSIDER IN A PUBLIC FORUM REPLACING THE TRIPLE DEPOSITARY FORMAULA.

8. WE REPORT THE FOLLOWING ADDITIONAL MATTERS FOR THE RECORD. THE PARTICIPANTS HAVE ACCEPTED A WELL-DRAFTED INDIAN PROPOSAL ON INT'L COOPERATION IN SCIENTIFIC INVESTAGATION WHICH READS: QUOTE STATES PARTIES SHALL PROMOTE INT'L COOPERATION AND MUTUAL ASSISTANCE IN SCIENTIFIC INVESTAGATION CONCERNING THE MOON, IN PARTICULAR, (A) BY PARTICIPATION IN INTERNATIONAL PROGRAMS AND BY ENCOURAGING COOPERATION IN SCIENTIFIC INVESTAGATION BY PERSONNEL OF DIFFERENT COUNTRIES; (B) BY DISSEMINATION OF THE RESULTS OF RESEARCH PROGRAMS THROUGH INT'L CHANNELS; (C) BY COOPERATION IN MEASURES TO STRENGTHEN RESEARCH CAPABILITIES OF DEVELOPING COUNTRIES, INCLUDING THE PARTICIPATION OF THEIR NATIONS IN RESEARCH PROGRAMS. END QUOTE.

9. LIABILITY. THE PARTICIPANTS HAVE ACCEPTED THE US PROPOSAL REPORTED USON 1133.

10. INTERNATIONAL LAW STANDARD. THE PARTICIPANTS HAVE AGREED THAT ART II OF TH TREATY, WHICH CONTAINS THE BASIC PROVISION ON INT' L LAW ALONG THE LINES OF THE OUTER SPACE TREATY, SHOULD READ "ALL ACTIVITIES ON THE MOON, INCLUDING ITS EXPLORATION AND USE, SHALL BE CARRIED OUT IN ACCORDANCE WITH INTERNATIONAL LAW, INCLUDING THE CHARTER OF THE UN AND TAKING INTO ACCOUNT THE DECLARATION ON PRINCIPLES OF INT'L LAW CONCERNING FRIENDLY RELATIONS AND COOPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UN, ADOPTED BY THE GENERAL ASSEMBLY ON 24 OCT 1970, IN THE INTEREST OF MAINTAINING INTERNATIONAL PEACE AND SECURITY AND PROMOTING INTERNATIONAL COOPERATION AND MUTUAL UNDERSTANDING AND WITH DUE REGARD TO THE CORRESPONDING INTERESTS OF ALL OTHER STATES PARTIES."

11. RELATION TO OTHER SPACE TREATIES. THE PARTICIPANTS HAVE ACCEPTED THE AUSTRALIAN POSITION THAT THE TREATY WOULD BEST INCLUDE NO PROVISION ON WHAT HAPPENS IN THE

CONFIDENTIAL

FORM

Department of State **TELEGRAM**

CONFIDENTIAL

PAGE 03 USUN N 01194 02 OF 02 050945Z

EVENT OF AN APPARENT CONFLICT OR DISPARITY BETWEEN THE

APPLICATION OF ONE OF ITS PROVISIONS WITH THE APPLICATION OF, E.G., A PROVISION OF THE OUTER SPACE TREATY. AUSTRALIA HAS CONSISTENTLY MAINTAINED THAT WESTERN INTERESTS ARE BEST SERVED BY LEAVING THE MATTER COMPLETELY OPEN SO AS TO PERMIT FLEXIBLE INVOCATION OFTHE OUTER SPACE TREATY, ASTRONAUT AGREEMENT OF LIABILITY CONVENTION IN THE UNLIKELY EVENT THAT A CONFLICT OR DISPARITY ARISES IN THE FUTURE.
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